86-1216

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

NO. _____

REDIEHS EXPRESS, Inc.,

Petitioner,

vs.

PATRICIA MAPLE and
JAMES MAPLE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF INDIANA

John T. Lorenz
KIGHTLINGER & GRAY
151 North Delaware Street
660 Market Square Center
Indianapolis, Indiana 46204
(317) 638-4521

Attorneys for Petitioner

Central Publishing Company, Inc., Indianapolis, IN 46206

QUESTION PRESENTED

This case presents a question of interpretation and application of the Interstate Commerce Commission's regulations governing the responsibility of one engaged in interstate commerce through the use of leased equipment. The issue is narrow: may the carrier-lessee be held absolutely liable for the negligence of the operator of the vehicle under circumstances that would not impose a similar liability on a carrier-owner for the negligence of his employee-operator?

PARTIES TO THE PROCEEDING

The caption of the opinion filed by the Court of Appeals of Indiana lists the following non-appealing defendants:

The Indiana Department of Highways,
Wayne W. Jacob,
David W. Snyder,
Edward W. Jessie,
Lesco Truck Brokers, Inc.,
L.A. Wroten Co., and
S.C. Shannon Company

These defendants are not parties to this proceeding.

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REFERENCE TO OPINIONS BELOW

Order of the Bartholomew Circuit Court was entered August 20, 1985, and is reprinted in APPENDIX A. Certification of Interlocutory Order to the Court of Appeals of Indiana was entered in the Bartholomew Circuit Court on September 16, 1985 and is reprinted in APPENDIX B. The opinion of the Court of Appeals of Indiana affirming the judgment of the Bartholomew Circuit Court was entered April 23, 1986, is reported at 491 N.E.2d 1006, and is reprinted in APPENDIX C. The denial of the petition for transfer, without opinion, by the Supreme Court of Indiana was entered October 8, 1986, and is reprinted in APPENDIX D.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3) permitting the Court to review final judgments of the highest court of a state in which a decision could be had by writ of certiorari where any title, right, privilege or immunity is specifically set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under the United States.

The Order of the Bartholomew Circuit Court granting a summary judgment was entered on August 20, 1985. On September 16, 1985, the Bartholomew Circuit Court certified the interlocutory order to the Court of Appeals of Indiana, which under Indiana Rules of Trial Procedure, Rules 4(B)(6) and 54(B), rendered the judgment final and ripe for appeal. *Hudson v. Tyson* (1978), Ind. App., 383 N.E.2d 66. Federal law also renders this judgment final for purposes of 28 U.S.C. §1257, notwithstanding further state court proceedings, since the federal issue is conclusive of the further proceedings and the federal issue is finally decided by the highest court in the state and will require decision regardless of the outcome of the remaining state court proceedings. *Cox Broadcasting Corp. v. Cohn* (1975), 420 U.S. 469, 43 L.Ed.22d 328, 95 S.Ct. 1029.

The decision of the Court of Appeals of Indiana was entered on April 23, 1986. On October 8, 1986, the Supreme Court of Indiana denied petition for transfer. The determination by the Court of Appeals of Indiana is, therefore, a decision by the highest court of the state. *Interstate Circuit, Inc. v. Dallas* (1968), 390 U.S. 676, 20 L.Ed.2d 225, 88 S.Ct. 1298.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

U.S. Const. Art. I, §8, Cl.3:

> Power of Congress to regulate commerce.
>
> To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

28 U.S.C. §1257(3):

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> ***
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

49 U.S.C. §11107(a) (1978):

> "(a) Except as provided in section 11101(c) of this title [49 USCS §11101(c)], the Interstate Commerce Commission may require a motor carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title [49 USCS §§10521 et seq.] that uses motor vehicles

not owned by it to transport property under an arrangement with another party to —

> (1) make the arrangement in writing signed by the parties specifying its duration and the compensation to be paid by the motor carrier;
>
> (2) carry a copy of the arrangement in each motor vehicle to which it applies during the period the arrangement is in effect;
>
> (3) inspect the motor vehicles and obtain liability and cargo insurance on them; and
>
> (4) have control of and be responsible for operating those motor vehicles in compliance with requirements prescribed by the Secretary of Transportation on safety of operations and equipment, and with other applicable law as if the motor vehicles were owned by the motor carrier."

49 U.S.C. §304(e)(2) (1977):

> (e) Subject to the provisions of subsection (f) hereof, the Commission is authorized to prescribe, with respect to the use by motor carriers (under leases, contracts, or other arrangements) of motor vehicles not owned by them, in the furnishing of transportation of property —
>
> > (2) such other regulations as may be reasonably necessary in order to assure that while motor vehicles are being so used the motor carriers will have full direction and control of such vehicles and will be fully responsible for the operation thereof in accordance with applicable law and regulations, as if they were the owners of such vehicles, including the requirements prescribed by or under the provisions of this part with respect to safety of operation and equipment and inspection thereof, which requirements may include but shall not be limited to promulgation of regulations requiring liability and cargo insurance covering all such equipment.

49 C.F.R. §1057.12(d):

> "The lease shall provide that the authorized carrier lessee shall have exclusive possession, control, and use of the equipment for the duration of the lease. The lease shall further provide that the authorized carrier lessee shall assume complete responsibility for the operation of the equipment for the duration of the lease."

Indiana Rules of Trial Procedure, Rule 4(B)(6):

> "... Also, appeal from interlocutory orders shall be taken to the Court of Appeals in the following cases:
>
> ***
>
> (6) Any other interlocutory order, if the trial court certifies and the court on appeal or a judge thereof finds on petition that:
>
> (a) The appellant will suffer substantial expense, damage or injury if the order is erroneous and the determination thereof is withheld until after judgment, or
>
> (b) The order involves a substantial question of law, the early determination of which will promote a more orderly disposition of the case, or
>
> (c) The remedy by appeal after judgment is otherwise inadequate. The petition under subsection (6) of subdivision (B) of this rule shall not stay proceedings in the trial court unless the trial court judge or the court on appeal or a judge thereof shall so order, and such order may be made conditional upon the furnishing of a bond or security protecting the appellee against loss incurred thereby, if any.

Indiana Rules of Trial Procedure, Rule 54(B):

> "(B) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one (1) claim for

relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and rights and liabilities of all the parties. A judgment as to one or more but fewer than all of the claims or parties is final when the court in writing expressly determines that there is no just reason for delay, and in writing expressly directs entry of judgment, and an appeal may be taken upon this or other issues resolved by the judgment; but in other cases a judgment, decision or order as to less than all the claims and parties is not final."

STATEMENT OF FACTS

This case arose out of a motor vehicle accident on June 15, 1983, in Scott County, Indiana. A semi-tractor and trailer initiating the chain reaction accident displayed the ICC placard of Rediehs Express, Inc.[1] The driver, Jacob, was hired by the owner-passenger, Snyder. Rediehs leased the rig for thirty days or more, and a haul was made from L'Anse, Michigan to Fort Lauderdale, Florida. After unloading, Snyder ignored the instructions of Rediehs to proceed to position for loading for a return haul, and Snyder entered into a trip lease, without the knowledge of

[1] Rediehs Express, Inc., is a corporation without parent, subsidiary or affiliate companies.

Rediehs, with Lesco, Wroten and Shannon to haul watermelons to Wisconsin. Snyder and Jacob were embarked on this enterprise when the accident occurred. Jacob was driving and pleaded guilty to negligence in causing the accident. A summary judgment was entered against Jacob and Snyder as to liability.

A summary judgment was granted removing Lesco, Wroten and Shannon from the litigation. A summary judgment of liability for the negligence of Jacob was entered against Rediehs. In granting the summary judgment, the trial court refused to follow the law as established by the Seventh Circuit Court of Appeals in *Gudgel v. Southern Shippers, Inc.* (7th Cir. 1967), 387 F.2d 723, holding that a carrier-lessee is not liable for the negligence of the driver of the leased vehicle if the driver is not engaged in the business of the lessee. Rather, the trial court held that the carrier-lessee is liable as a matter of law for any negligence of the driver of the leased vehicle. The summary judgment was certified to the Court of Appeals of Indiana for review.

The Court of Appeals of Indiana affirmed the determination of the trial court. Although the court acknowledged the Seventh Circuit holdings in *Gudgel v. Southern Shippers, supra,* and *Pace v. Southern Express Company* (7th Cir. 1969), 409 F.2d 331, a case decided on state law but referring to the like interpretation of federal law, wherein it was held that a carrier-lessee could not be responsible for the negligence of the driver if the driver was not engaged in the business of the carrier, the Indiana Court of Appeals relied on case law from other federal circuits and other jurisdictions and held that the carrier-lessee is absolutely liable for the negligence of the driver during the term of the lease without reference to whose business is being furthered at the time of the accident.

Rediehs petitioned the Supreme Court of Indiana for review of the opinion of the Court of Appeals. The Supreme Court denied transfer without opinion.

In its brief in opposition to the Motion for Summary Judgment, its Appellant's Brief in the Court of Appeals of Indiana, and its Brief in Support of Transfer to the Supreme Court of Indiana, Rediehs asserted:

1. The summary judgment was contrary to law since a carrier-lessee is liable only when the leased vehicle is being operated in furtherance of the lessee's business, a fact determination still in dispute;

2. The Seventh Circuit Court of Appeals has held that the carrier-lessee is liable only to the extent an owner would be liable, which requires a determination of whose business is being furthered by operation of the equipment; and

3. To hold the carrier-lessee liable to a greater extent than an owner is beyond the authority granted the ICC in the enabling statute, 49 U.S.C. §11107(a)(4) (1978) and beyond the intent of Congress in enacting the statutory basis for the regulations.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I

CONFLICTING DECISIONS OF CIRCUIT COURTS OF APPEALS INTERPRETING INTERSTATE COMMERCE REGULATIONS SHOULD BE RESOLVED BY THIS COURT

This Court has established the principle that inconsistencies among the Circuit Courts of Appeals regarding interpretation of regulations having the effect of law in areas pre-empted by federal law provide a basis for granting certiorari. *Immigration and Naturalization Services v. Errico* (1966), 385 U.S. 214, 17 L.Ed.2d 318, 87 S.Ct. 473; *National Association of Greeting Card Publishers v. United States Postal Service* (1983), 462 U.S. 810, 77 L.Ed.2d 195, 103 S.Ct. 2717, on remand *Newsweek, Inc. v. United States Postal Service* (2nd Cir. 1983), 716 F.2d

993. As in the cases addressing regulations of the Immigration and Naturalization Service and the United States Postal Service, the present case involves an area of regulation, specifically the interstate carriage of goods, ordained to the exclusive control of the federal government by the United States Constitution, Interstate Commerce Clause, Art. 1, §8, Cl. 3, since the subject matter admits and requires uniformity of regulation. *Gloucester Ferry Company v. Pennsylvania* (1885), 114 U.S. 196, 29 L.Ed. 158, 5 S.Ct. 826. Such uniformity of regulation is impossible when the extent of responsibility of one engaged in interstate hauling is dependent on the judicial circuit interpreting the requirements imposed. A final determination of consistent application is of vital importance to the numerous carriers and drivers engaged in interstate transportation, the insurers providing the mandated protection of those involved in the industry, and every member of the public who shares the highways with and incurs the possibility of injury from, vehicles involved in this nationwide industry.

Focusing only on those cases determined by Circuit Courts of Appeals which involve fact situations and issues similar to those involved in this case and which have been decided by reliance on the ICC regulations, the inconsistencies are blatant. The Seventh Circuit decision in *Gudgel v. Southern Shippers, Inc., supra,* and the Sixth Circuit decision in *Wilcox v. Transamerican Freight Lines, Inc.* (6th Cir. 1967), 371 F.2d 403, hold that the carrier-lessee is liable for the negligence of the driver of the vehicle only if the vehicle is being operated by authority of the carrier-lessee's ICC certificate and is engaged in the business of the carrier-lessee. This interpretation effectuates the enabling provisions of the Interstate Commerce Act and the intent of Congress in enacting the provisions wherein the carrier-lessees are to be held responsible "... as if they were the owners of the vehicle." 49 U.S.C. §11107(a)(4) (1978) [previously 49 U.S.C. §304

(1977)]; H.R. Rep. No. 2425, 84th Cong., 2d Sess. (1956), reprinted in *U.S. Code Cong. & Admin. News*, pp. 4304, 4309. These cases interpret the regulations as creating an irrebuttable presumption of employer/employee status between the carrier-lessee and the driver. *See: Gudgel v. Southern Shippers, Inc., supra* at 725. The lessee-statutory employer is thus rendered liable to the same extent as an owner-employer would be liable with reference being made to the details of the business being performed by the driver at the time of the injury.

The other line of cases of unquestionable similarity is represented by *Mellon National Bank & Trust Co. v. Sophie Lines, Inc.* (3rd Cir. 1961), 289 F.2d 473, *Wellman v. Liberty Mutual Ins. Co.* (8th Cir. 1974), 496 F.2d 131, and *Rodriguez v. Ager* (10th Cir. 1983), 705 F.2d 1229. These cases interpret the ICC regulations as imposing absolute liability on the carrier-lessee for the negligence of the driver regardless of whose business is being undertaken at the time of the occurrence. These courts interpret the regulations as imposing an irrebuttable presumption of furtherance of the carrier-lessee's business whenever the vehicle is displaying the ICC placard of the lessee. *See: Mellon v. Sophie Lines, supra* at 477.

This difference of interpretation has not been finally determined by *Transamerican Freight Lines, Inc. v. Brada Miller Freight Systems, Inc.* (1975), 423 U.S. 28, 46 L.Ed. 2d 169, 96 S.Ct. 229, even though the Court of Appeals of Indiana made citation to *Brada Miller* as authority for the proposition that the carrier-lessee is liable for injuries caused as long as the vehicle is being operated under the lessee's ICC authority even if the lessor is engaged in an undertaking completely removed from the business of the lessee. *Rediehs Express, Inc. v. Maple* (1986), Ind. App., 491 N.E.2d 1006, 1009 [APPENDIX C, p. C-7]. *Brada Miller* addressed only one narrow question: "Does the control and responsibility requirement (imposed by the ICC regulations) prohibit, as against public policy, an

agreement between carriers by which the lessor indemnifies the lessee for loss caused by the negligence of the lessor?" *Brada Miller, supra* 423 U.S. at 30. This Court held only that the regulations of the Commission were not violated by an indemnification clause in the lease. Id. at 41. *Brada Miller* does not address the issue of whether the carrier-lessee may be held liable for the negligence of the operator of the vehicle under circumstances which would not allow imposition of liability on an owner for the negligence of an employee.

The decisions of the Sixth and Seventh Circuits are, therefore, in conflict with those of the Third, Eighth and Tenth Circuits on the issue of the responsibility imposed on a carrier-lessee by the ICC regulations. Uniformity of application of these federal laws, the foundation of the federal system of laws, is vital to all those involved in the interstate transportation of goods and all those members of the public effected thereby.

II

CONFLICTING DECISIONS BASED ON FEDERAL LAW OF THE INDIANA COURT OF APPEALS AND THE SEVENTH CIRCUIT COURT OF APPEALS SHOULD BE RESOLVED BY THIS COURT

This Court has noted jurisdiction and granted Writ of Certiorari to resolve conflicts in decisions based on federal law between the Circuit Court of Appeals and the highest court of a state. *Memorial Hospital v. Maricopa County* (1974), 415 U.S. 250, 39 L.Ed.2d 306, 94 S.Ct. 1076. Since the interpretation of federal law by the Supreme Court of the United States is controlling on both the federal and state courts, a determination of the extent of responsibility imposed on an interstate transportation carrier-lessee is crucial to afford uniformity and consistency.

The Court of Appeals of Indiana, the highest court of the

state for purposes of this case, has determined, in spite of clear authority of the Sixth and Seventh Circuits to the contrary, that a carrier-lessee, under whose ICC certificate a vehicle is being operated in interstate transportation, is absolutely liable for injury caused the public during the term of the lease. The issue of whose business is being furthered is irrelevant to a determination by the state court because the court asserts that responsibility is fixed on the carrier-lessee by the ICC regulations. *Rediehs Express, Inc. v. Maple, supra.*

The Indiana Court of Appeals acknowledges that its determination is inconsistent with that of the Sixth and Seventh Circuit Courts of Appeals in *Gudgel v. Southern Shippers, supra* and *Wilcox v. Transamerican Freight Lines, supra,* as addressed previously. The Court refers to no less than twelve cases as authority for holding the carrier-lessee absolutely liable. *Rediehs Express v. Maple, supra* at 1009-1010 (See: Appendix C, p. C-7). The cited authorities include decisions of the United States Supreme Court, Circuit Courts of Appeals, United States District Courts and state appellate courts. The magnitude of the problem created by such a split of authority is evident. The litigants will invoke the jurisdiction of the court most favorable to their position, forum shopping will prevail, and uniformity will be nonexistent. Such a possibility is not idle speculation when one realizes that the litigants in these cases are generally those using the national highway system and having contacts to several states and judicial circuits. A resolution by this Court of the inconsistent application of the federal law is required.

CONCLUSION

The federal government is accorded plenary authority over interstate transportation to afford uniform treatment under law to those involved therein and those affected thereby. When interpretation of federally imposed regulations is in such a disarray as to make the outcome of a cause of action dependent on the court in which it is brought, uniformity is destroyed. The issuance of a Writ of Certiorari by this Court is imperative to the uniform administration of the federal regulation of interstate transportation.

JOHN T. LORENZ
KIGHTLINGER & GRAY
151 North Delaware Street
660 Market Square Center
Indianapolis, Indiana 46204

Attorneys for Petitioner

Appendix

APPENDIX A

STATE OF INDIANA	)	IN THE BARTHOLOMEW CIRCUIT COURT SS
COUNTY OF BARTHOLOMEW	)	CAUSE NO. 84-633-C
PATRICIA MAPLE and JAMES MAPLE, *Plaintiffs*, v.	)	
THE INDIANA DEPARTMENT OF HIGHWAYS, WAYNE W. JACOB, DAVID W. SNYDER, REDIEHS EXPRESS, INC. EDWARD W. JESSIE, LESCO TRUCK BROKERS, INC., L. A. WROTEN CO., and S. C. SHANNON COMPANY, *Defendants.*	)	

ORDER

The plaintiffs, Patricia and James Maple, have moved for summary judgment on their complaint as to defendant-Rediehs Express, Inc. Plaintiffs argue that Rediehs is liable for plaintiffs' injuries because of the responsibilities placed upon it by the Interstate Commerce Act. In particular, the plaintiffs cite a companion case of this one decided by Judge Moody in the Northern Indiana Federal District Court on June 18, 1985, *Hanserd, et al. v. Rediehs Express Inc., et al*, Civil No. H-83-616. Rediehs claims that the companion case is not controlling and is contrary to the law in the 7th Circuit U.S. Court of Appeals, and it cites *Gudgel v. Southern Shipper, Inc.*, 3787 F.2d 723 (7th Cir. 1967), as authority for denying summary judgment.

Undoubtedly, Judge Moody has ruled contrary to the view the 7th Circuit U.S. Court of Appeals has of the Interstate Commerce Commission's rules and regulations governing liability in truck-rig lease arrangements. However, this Court is in agreement with Judge Moody's review of the conflicting case law and the purposes underlying the liability scheme of the I.C.C. rules and regulations. As stated in *Rodriquez v. Ager*, 705 F.2d 1229 (10th Cir. 1983), page 1236:

> "[It] seeks to eliminate fly-by-night contracting by requiring the lessee of a vehicle who permits the equipment to be used on this basis to assure responsibility for the accidents of the driver of the vehicle which displays its insignia. To fail to uphold the I.C.C. Regulations would result in injustice. Trucking equipment such as that here present has a capability for bringing about terrible injuries and damages to life."

To the extent that driver Wayne Jacob may be found to have been negligent and his negligence was a cause of the

plaintiffs' injuries, then defendant-Rediehs Express, Inc. will be liable.

IT IS THEREFORE ORDERED that if defendant-Wayne Jacob acted negligently and his negligence was a cause of the plaintiffs' damages, then defendant-Rediehs Express, Inc. will be liable as a matter of law.

Dated this 20th day of August, 1985.

/s/ R. T. Green
R. T. Green, Judge
Bartholomew Circuit Court

APPENDIX B

STATE OF INDIANA	)	IN THE BARTHOLOMEW CIRCUIT COURT
	)	SS:
COUNTY OF BARTHOLOMEW	)	CAUSE NO. 84-633-C
PATRICIA MAPLE and JAMES MAPLE, *Plaintiffs,* v.	)	
THE INDIANA DEPARTMENT OF HIGHWAYS, WAYNE W. JACOB, DAVID W. SNYDER, REDIEHS EXPRESS, INC. EDWARD W. JESSIE, LESCO TRUCK BROKERS, INC., L. A. WROTEN CO., and S. C. SHANNON COMPANY, *Defendants.*	)	

CERTIFICATION OF INTERLOCUTORY ORDER TO COURT OF APPEALS OF INDIANA

This cause came before the Court on the Petition for Certification of Order Granting Plaintiffs' Motion for Summary Judgment filed by defendant, Rediehs Express, Inc., which petition is in the following words and figures, to-wit:

(H.I.)

The Court, having considered said petition and finding it meritorious, now states:

1. Plaintiffs' Motion for Summary Judgment, filed on April 30, 1985, and argued on July 26, 1985, was granted by this Court on August 20, 1985.

2. This ruling was interlocutory.

3. The issue raised by the motion for summary judgment and argued by the parties is one of first impression in this jurisdiction. The decision of this Court was admittedly inconsistent with prior decisions of the United States Court of Appeals for the Seventh Circuit as well as prior decisions of the Indiana Court of Appeals under similar state regulations. In light of said inconsistencies, defendant, Rediehs Express, Inc., is entitled to appellate review of this Court's order and, thus, the order involves a substantial question of law, the early determination of which will promote a more orderly disposition of this case.

4. The effect of this Court's order precludes the defendant the opportunity to litigate the liability issues to the jury. In light of the uncertainty this Court has in its ruling, as well as the uncertainty created by the conflicting opinions in the various federal courts, it would be more economical for the parties and this Court and more consistent with efficient judicial administration to determine at this time whether the defendant is so entitled to litigate the liability issues to the jury and, if so, to set this case for one trial according to the decision of the Court of Appeals of Indiana.

5. For this same reason, the remedy by appeal after final judgment is otherwise inadequate.

6. There is no just reason for delay.

IT IS, THEREFORE ORDERED that the Petition for Certification of Order Granting Plaintiffs' Motion for Summary Judgment is GRANTED and, there being no just reason for delay, the Order of August 20, 1985, is

hereby certified to the Court of Appeals of Indiana. This action is stayed without bond pending appeal.

IT IS SO ORDERED this 16th day of September 1, 1985.

/s/ R. T. Green
JUDGE, Bartholomew Circuit Court

APPENDIX C

IN THE
COURT OF APPEALS OF INDIANA
FIRST DISTRICT

REDIEHS EXPRESS, INC., AND WAYNE W. JACOB AND JOHN W. SNYDER, *Defendant-Appellants* -v- PATRICIA MAPLE and JAMES MAPLE, *Plaintiff-Appellees* THE INDIANA DEPARTMENT OF HIGHWAYS, WAYNE W. JACOB, DAVID W. SNYDER, EDWARD W. JESSIE, LESCO TRUCK BROKERS, INC., L. A. WROTEN CO., and S. C. SHANNON COMPANY, *Non-Appealing Defendants*	)	NO. 1-985 A 219

INTERLOCUTORY APPEAL FROM
BARTHOLOMEW CIRCUIT COURT
The Honorable R. T. Green, Judge
Cause No. 84-633-C

NEAL, J.

STATEMENT OF THE CASE

Defendant-appellants, Rediehs Express, Inc. (Rediehs), Wayne Jacob (Jacob), and David W. Snyder (Snyder), have filed interlocutory appeals from adverse partial summary judgments fixing liability upon them for damages for personal injuries in a suit filed by Patricia Maple and James Maple (Maples) arising out of a motor vehicle collision.

We affirm.

STATEMENT OF THE FACTS

On June 10, 1983, Rediehs, a freight company operating under Interstate Commerce Commission (ICC) permits, leased a tractor and trailer from Snyder, who had no ICC permits, for a period of 30 days, the minimum period required by ICC regulations. The lease contained a clause by which lessor (Snyder) agreed to indemnify lessee (Rediehs) for loss arising out of the negligent operation of the vehicle. Further terms of the lease stated that Jacobs, Snyder's regular driver, would be Rediehs' driver. Rediehs' identification decal bearing its name and ICC identification number was placed on Snyder's tractor pursuant to the terms of the lease and pursuant to ICC regulations. Following instructions contained in the lease, Jacob and Snyder hauled a cargo from Michigan to Ft. Lauderdale, Florida, which they delivered on June 13, 1983. Snyder was directed by Rediehs to go toward northern Florida to get into position to pick up a northbound cargo for Rediehs. On June 12 Snyder entered into some arrangement with Lesco Truck Brokers, Inc. (Lesco), L. A. Wroten Co. (Wroten) and S. C. Shannon Company (Shannon) to transport a load of watermelons to Wisconsin. A dispute exists in the evidence as to whether Rediehs or its agents knew and consented to this contract. Rediehs submitted affidavits that none of its employees with authority to consent had authorized Snyder or Jacob to transport the watermelons and that it had received no payment therefor.

On June 15, 1983, while Jacob was driving the watermelon laden tractor and trailer, still carrying Rediehs' decal, and still operating within the term of the lease which was carried in the tractor, he became involved in a motor vehicle accident on Interstate 65 near Scottsburg, Indiana. As a result of the accident six people were killed and others injured, including Patricia Maple, who was forced over the side of a bridge into the creek below. Jacob was charged with, and pleaded guilty to, six counts of reckless homicide and eleven courts of criminal recklessness, Count 10 of which concerned Patricia Maple. By such pleas and by his deposition, Jacob admitted to entering a construction zone at an excessive speed during a rain storm. He admitted that he was negligent, he admitted the collision, and he admitted that his negligence caused Patricia Maple's injuries.

Suit was filed against Rediehs, Snyder, Jacob, the Indiana Department of Highways, Edward W. Jessie (a motorist), Lesco, Wroten, and Shannon. The latter three defendants were dismissed from the case on summary judgments. Conversely, partial summary judgments determined the issue of liability against Rediehs, Jacob and Snyder who appeal those decisions. In this appeal they raise only the issue of the propriety of summary judgments.

DISCUSSION AND DECISION

Issue I. **Liability of Jacob and Snyder.**

Jacob and Snyder contend that the trial court erred in entering summary judgment against them on the issue of liability because a genuine issue of material fact exists. They argue that in spite of the pleas of guilty, admissions made attendant thereto, and the admissions made in Jacob's deposition, an issue of material fact remains because the pleas and admissions are conclusory. They also point to Jacob's deposition wherein he stated that if the construction zone had not been so narrow, and the

barricades had not been tied down, he could have avoided the accident. Jacob and Snyder further argue that other issues exist as to whether the car in front of Jacob was improperly stopped. They also argue the issue of whether the weather was a causative factor.

Summary judgment is appropriate only when the evidentiary material before the court shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. On appeal we are bound by that standard. *Consolidated City of Indiana v. Cutshaw* (1983), Ind.App., 443 N.E. 2d 853, *trans. denied.* A summary judgment proceeding is not an abbreviated trial. *Id.* Factual issues are material when they bear upon the ultimate resolution of the case. *Campbell v. Eli Lilly & Co.* (1980), Ind.App., 413 N.E.2d 1054, *trans. denied,* 421 N.E. 2d 1099. The burden is upon the proponent of the motion for summary judgment to demonstrate the lack of an issue of material fact, and any doubt is to be resolved in favor of the party opposing the motion. *Bell v. Northside Fin. Corp.* (1983), Ind., 452 N.E.2d 951; *Rowe v. Small Business Admin.* (1983), Ind.App., 446 N.E.2d 991, *trans. denied.*

Summary judgment is inappropriate if conflicting inferences can be drawn from the evidence before the court. *Rowe, supra.* It has been held that ordinarily, summary judgment is not the appropriate vehicle to determine a negligence case. *Lambert v. Parrish* (1984), Ind.App., 467 N.E.2d 791; *Doe v. Barnett* (1969), 145 Ind.App. 542, 251 N.E.2d 688, *trans. denied.* Nevertheless, once the moving party has met his burden, the non-moving party may not rest upon his pleadings, but he must go forward with evidence to demonstrate that a genuine issue of material fact exists. *Conard v. Waugh* (1985), Ind.App., 474 N.E.2d 130. We first note that the fact that the lessee is liable, as we hold in Issue II infra, does not absolve the lessor. *Simmons v. King* (5th Cir. 1973), 478 F.2d 857.

It was established that Jacob was the driver and an employee of both Snyder and Rediehs. The proceedings in

the guilty plea hearing to the various criminal charges were factual. There, Jacob admitted to traveling at unsafe speeds in excess of 50 miles per hour upon entering a construction zone, where a speed limit of 35 miles per hour had been posted, and was unable to control his vehicle. From the terrible carnage wrought, inference can be drawn that the speed was greatly in excess of 50 miles per hour. He admitted his negligence. He admitted the causation. Maples have carried their burden.

Jacob and Snyder's argument is merely that negligence of others were contributing factors. It does not require citation of authority to show that where joint tort-feasors each by their separate acts of negligence contribute to an injury, the negligence of one is not a defense to the negligence of another.

Jacob and Snyder also argue that the trial court erred in considering evidence of Jacob's plea of guilty. They direct us to IND. CODE 34-3-18-1, enacted in 1982, which permits evidence of a final judgment, after a trial or upon a plea of guilty in felony cases, to be used in civil cases as proof of facts contained therein, and such judgment is not excludable as hearsay whether the declarant is available or not. Since the ciminal recklessness charges are not felonies, they argue, such pleas were not admissible.

Indiana has long permitted pleas of guilty in all criminal cases to be used in civil cases, if appropriate and relevant, as an admission of a party against interest. *Brattain v. Herron* (1974), 159 Ind.App. 663, 309 N.E.2d 150. Under Indiana authority, proof of conviction after a trial is not admissible because it is based upon hearsay or based upon the opinion of another trier. A plea of guilty, however, is an admission or a declaration against interest. It is our opinion that this rule was not restricted by IND. CODE 34-3-18-1, but the statute merely enlarges upon it in felony cases. Any statement or admission against interest, wherever made, is admissible at trial. *See* 12 I.L.E. *Evidence* Sec. 131, 132 and 135 (1959); Karlson, *1982 Survey of Recent Developments in*

Indiana Law — Evidence, 16 IND.L.REV. 191, 194. Authorities cited by Jacob and Snyder concerning prior testimony of non-party witnesses are not in point.

We hold that the court correctly entered summary judgment against Jacob and Snyder.

Issue II. **Liability of Rediehs.**

As noted in the Statement of Facts, some evidence may exist, though conflicting, that Jacob and Snyder may have been embarked upon an enterprise of their own at the time of the wreck, without Rediehs' knowledge and consent. However, during this enterprise they were still operating within the term of the lease which was carried in the tractor, and they were still carrying Rediehs' identification decal and ICC number. No receipt had been executed terminating the lease and evidencing re-delivery of the equipment to the lessor. The trial court held that by authority of certain ICC regulations and certain federal and state court cases, Rediehs would be liable for any negligence of Jacob whether he was acting within the scope of the lease or not. Rediehs argues that Maples can recover from it only if they prove that Jacob and Snyder were acting on Rediehs' behalf under the lease at the time of the wreck. Since there was some evidence that they were not so acting, summary judgment, it argues, was inappropriate.

Two divergent lines of authority exist concerning liability of carrier-lessees, like Rediehs, where the owner-driver lessor, while operating within the lease, is involved in a wreck while pursuing business of his own. One line of cases holds that the carrier-lessee can be held liable for the negligence of the lessor only if the lessor is operating by authority of the carrier's ICC certificate and is carrying out the carrier's undertaking. If the lessor is not engaged in the business of the carrier-lessee at the time of the collision, the carrier-lessee is not liable under the doctrine of respondeat superior. This line of cases is represented by: *Pace v. Southern Express Co.* (7th Cir. 1969), 409 F.2d 331; *Gudgel*

v. Southern Shippers, Inc. (7th Cir. 1967), 387 F.2d 723; and *Wilcox v. Transamerican Freight Lines, Inc.* (6th Cir. 1967), 371 F.2d 403, *cert. denied*, (1966), 387 U.S. 931, 87 S.Ct. 2053, 18 L.Ed.2d 992.

The other line of cases holds that the ICC regulations fix the primary responsibility for damages upon the ICC permit holder and that attempt to limit its responsibility must be rejected. They hold that so long as the carrier-lessee permits a lessor to use its authority, it is responsible for injuries caused thereby even if the lessor is embarked on an undertaking of his own while using the authority. Those cases are represented by: *Transamerican Freight Lines, Inc. v. Brada Miller Freight Sys., Inc.* 423 U.S. 28, 96 S.Ct. 229, 46 L.Ed.2d 169, (1975); *Rodriguez v. Ager* (10th Cir. 1983), 705 F.2d 1229; *Carolina Casualty Ins. Co. v. Insurance Co. of N. AM.* (3rd Cir. 1979), 595 F.2d 128; *Wellman v. Liberty Mut. Ins. Co.* (8th Cir. 1974), 496 F.2d 131; *Proctor v. Colonial Refrigerated Transp., Inc.* (4th Cir. 1974), 494 F.2d 89; *Simmons, supra; Mellon Nat'l. Bank & Trust Co. v. Sophie Lines, Inc.* (3rd Cir. 1961), 289 F.2d 473; *Riddle v. Trans-Cold Express, Inc.* (S.D.Ill. 1982), 530 F.Supp. 186; *Mustang Transp. Co. v. Ryder Truck Lines, Inc.* (E.D.Pa. 1981), 523 F.Supp. 1097, *aff'd.* (3rd Cir. 1982), 688 F.2d 823, *cert. denied*, (1983), 459 U.S. 1127, 103 S.Ct. 763, 74 L.Ed.2d 978; *Cosmopolitan Mut. Ins. Co. v. White* (D.Del. 1972), 336 F.Supp. 92; *Hodges v. Johnson* (W.D.Va. 1943), 52 F.Supp. 488; *Krieder Truck Serv., Inc. v. Augustine* (1979), 76 Ill.2d 535, 394 N.E.2d 1179; *Cox v. Bond Trans., Inc.* (1969), 53 N.J. 186, 249 A.2d 579, *cert. denied*, (1969), 395 U.S. 935, 89 S.Ct. 1999, 23 L.Ed.2d 450.

Indiana has not spoken on this subject though *Pace, supra*, is an Indiana diversity case.

The history of the regulations of motor carriers reveals that after the commencement of regulation in 1935, because of stringent and comprehensive rules regulating the conduct, operation, financial ability, and insurance coverage of the motor truck industry, a substantial number of

carriers possessing ICC certificates began to use equipment owned and driven by truckers who had no such ICC operating authority. This use was accomplished by a variety of leases, trip leases, and by other arrangements under which owner-operator truckers carried on the operations of the carriers with operating authority. In contracting with such persons the carriers took care to constitute the lessors as independent contractors which enabled them to avoid the commission's safety, financial, and insurance regulations that had been prescribed for equipment and drivers in order to protect the public. Many of the owner-operators without authority were itinerant truckers known as "gypsies," fly-by-night truckers with poor, unsafe equipment who had little financial ability. They may or may not have had adequate insurance. The hard care of the problem was the trip lease and its attendant evils which permitted an indifferent carrier to evade its safety and financial responsibility. *Cox., supra.* The practice of leasing made it difficult in accident cases to fix responsibility, and certified carriers could thus escape the consequences of the regulations and responsibility for accidents by employing irresponsible persons as independent contractors who were not financially accountable and who had no insurance or were underinsured. *Rodriguez, supra.* Thousands of unregulated trucks were on the road. *Simmons, supra.*

These practices ultimately came under the scrutiny of the ICC. Thereafter, under 49 U.S.C. Sec. 11107 (1982), Congress authorized the ICC and the Secretary of Transportation to prescribe regulations with respect to the use by motor carriers of motor vehicles not owned by them, but used pursuant to lease, contract or otherwise. The ICC thereupon adopted regulations governing the leasing by carriers of owner-driver equipment for the use by the carriers with operating authority for the interstate transportation of goods. *See* 49 C.F.R. Sec. 1057 (1982). Authorized carriers may use equipment owned by non-

franchised truckers only by a lease or contract in writing. 49 U.S.C. Sec. 11107(a)(1)(1982); 49 C.F.R. Sec. 1057.11(a) (1982). The lease must specify the duration thereof, 49 U.S.C. Sec. 11107(a)(1) (1982); 49 C.F.R. Sec. 1057.12(b) (1982), but the term thereof shall not be less than 30 days when the owner operates the equipment. 49 C.F.R. Sec. 1057.12(c) (1982). Exclusive possession, use and control is required to rest with the lessee-carrier who is obligated to assume complete responsibility for the operation of the equipment for the duration of the lease. 49 U.S.C. Sec. 11107 (a)(4) (1982); 49 C.F.R. Sec. 1057.12(d) (1982). The regulations require the compensation paid by the lessee to be specified as well as the inception and termination dates of the lease. 49 U.S.C. Sec. 11107(a)(1) (1982); 49 C.F.R. Sec. 1057.12(b), (e) (1982). When possession of the equipment passes from the lessor, the lessee-carrier is directed to execute a receipt therefor stating the time of day and the date when possession begins, and upon relinquishment of possession by the carrier, the owner of the equipment is mandated to execute a similar receipt to the carrier likewise stating the hour and date of retaking of possession. 49 C.F.R. Sec. 1057.11(b) (1982). At taking possession, the lessee is to make an inspection of the equipment. 49 U.S.C. Sec. 11107(a)(3) (1982). A copy of the lease or evidence thereof is required to be carried in the equipment. 49 U.S.C. Sec. 11107(a)(2) (1982); 49 C.F.R. Sec. 1057.11(c),(d) (1982). A sign or decal painted thereon or placed thereon in a removable manner is required to be attached to the equipment identifying the lessee as the operating carrier, which identification is required to be removed upon relinquishing the equipment to the lessor. 49 C.F.R. Sec. 1057.11(c)(1).

The objectives of the regulations were many. Sharing, transfer, or leasing out operating authority was prohibited. It provided for enforcement of safety responsibility, for financial responsibility, and for adequate insurance coverage. *Transamerica Freight Lines, Inc., supra; Cox,*

supra. Responsibility for control over the leased equipment is delegated to the lessee. Since only the carrier has ICC authority, it is not permitted to delegate it, abrogate it, or evade the responsibilities imposed by it by means of a contractual device, for there are basic requirements that are inherent in the relationship of the carrier for hire with operating authority to the public. *Cox, supra*. Thus, responsibility to the public under the leasing device is fixed. *Rodriguez, supra*. The stringent regulations also eliminate the difficulty faced by an injured plaintiff in determining who controlled the vehicle; the purpose upon which the vehicle was embarked at the time of the accident; and the questions of agency, employee or independent contractor status, frolic and detour, and borrowed employee. *Kreider, supra*.

We now turn to the holdings in the above cases.

An ICC carrier's liability for the equipment and the drivers covered by a leasing arrangement is not governed by the traditional common law doctrines of master-servant and respondeat superior. *Rodriguez, supra; Simmons, supra; Cox, supra*. The independent contractor concept has been eliminated for lease arrangements under ICC regulations. *Rodriguez, supra; Proctor, supra*.

Liability of a carrier is fixed as a matter of policy upon the carrier owning operating authority in lease situations in order to enforce ICC regulations. *Rodriguez, supra; Simmons, supra; Mellon, supra; Krieder, supra; Cox, supra*. Cases hold that where the leased vehicle is involved in an accident during the term of the lease while carrying on the decal the name and the ICC number of the carrier with operating authority, and while carrying a copy of the lease in the equipment with no release having been executed for the termination of the lease, the carrier is liable as a matter of law even though the owner-driver lessor was involved in a project of his own without the knowledge and consent of the carrier-lessee. *Rodriguez, supra; Wellman, supra; Simmons, supra; Mellon, supra;*

Kreider, supra; Cox, supra. As examples, in *Rodriguez*, the owner-lessor was hauling a cargo not connnected with lessee after proceedings to terminate the lease commenced but had not concluded. In *Mellon*, the lessor was hauling lumber not connected with lessee. In *Cox*, the owner-lessor was driving a tractor to his home from lessee's terminal. In *Kreider*, the lessor truck was used only intermittently by lessee, and while not being so used, lessor's truck became involved in an accident while hauling a cargo not connected with lessee.

The rationale expressed in these cases is that the lessee, by entering into the lease arrangement and placing his identification upon the vehicle, has vested the owner-lessor with authority he does not otherwise possess to transport commodities in interstate commerce. That authority continues during the duration of the lease and until the identification is removed and possession is surrendered. Likewise the responsibility of the lessee who has vested the owner-lessor with this authority must remain until possession is surrendered in the manner provided by the ICC regulations. *Rodriguez, supra; Simmons, supra; Mellon, supra; Kreider, supra; Cox, supra.* Without the lease and the identification on the decals, the owner-lessor would have no sembiance of an excuse to even be on the road for any purpose. *Mellon, supra.* Operating authority cannot be shared. *Transamerican Freight Lines, Inc., supra.* The court in *Rodriguez* concluded:

> "In summary ICC Regulations approach is applicable. The purpose is a praiseworthy one. It seeks to eliminate fly-by-night contracting by requiring the lessee of a vehicle who permits the equipment to be used on this basis to assure responsibility for the accidents of the driver of the vehicle which displays its insignia. To fail to uphold the ICC Regulations would result in injustice. Trucking equipment such as that here present has a capability for bringing about terrible injuries and damages to life. This is a typical illustration. Here all of the occupants except one child

(who was seriously injured) were killed as a result of the truck being on the wrong side of the highway."

Id. at 1236.

From the cases there emerges a policy designed to enforce the ICC regulations. The motor truck industry is closely regulated. In order to obtain operating authority, a carrier must demonstrate adequate financial ability, insurance coverage, ability to serve the public, and compliance with stringent safety requirements both as to equipment and competance of drivers. When the carrier, by lease, permits an unregulated truck and driver to be on the road wearing its livery, it makes it possible for the owner of that unregulated equipment and the driver thereof to do what he otherwise could not do. The ICC regulation, therefore, makes the carrier responsible for the lessor's conduct, which includes financial ability, insurance coverage, safety of equipment, and competence of drivers. Competence of drivers includes obedience to instructions. If the lessor-owner driver strays from instructions during the term of the lease, which act is predictable from the number of lawsuits on the subject, that too is the responsibility of the carrier, for without the lease he would not be on the road in any capacity.

Absent such a policy, when innocent people are hurt or killed, there will be, as here, a round robin of finger pointing by carriers, lessors, owners and drivers, cargo owners, and insurers raising issues of independent contractor, frolic and detour, whose cargo was being carried, what instructions the driver had, agency and the like in their attempt to evade responsibility for the carnage wrecked upon innocent motorists. The plaintiff encounters much difficulty in fixing responsibility, for only the carrier and his lessor really know their arrangements. A plaintiff should not be required to bear this burden nor should he be required to settle for a financially irresponsible defendant fathered by the carrier.

In short, the policy enunciated in the ICC regulations and the cases make the carrier totally responsible to the injured plaintiff as a matter of law for the negligence of the lessor and its drivers of a leased vehicle. The carrier must, at his peril, exert care in his leasing arrangements and avoid leasing from "gypsies" or fly-by-night, irresponsible truckers. The regulations and cases make the carrier police its lessors as it is policed by the ICC.

Argument is made that these cases create an unfair burden upon the carrier who is held responsible for the frolic and detour of its lessor. We disagree. Characteristically, the leases contain an indemnity clause held valid in *Transamerican Freight Lines, Inc., supra,* which requires the lessor to indemnify the lessee for any sums the lessee must pay to third parties on account of damage occasioned by the lessor's negligence. Such a clause exists in the case at bar. Thus, while as a matter of policy the primary liability to the plaintiff is fixed upon the carrier, the carrier has a right of indemnity against the lessor. If the carrier has been derelict in employing an under-insured, financially irresponsible or incompetent lessor, it has only itself to blame.

We agree with the holdings in the cases represented by *Rodriguez, Simmons, Mellon, Cox* and *Kreider,* and disagree with the line of cases represented by *Pace, Gudgel* and *Wilcox.* We hold that the trial court properly granted summary judgment on the issue of liability against Rediehs.

For the above reasons, this cause is affirmed.

Judgment affirmed.

ROBERTSON, P.J. and
RATLIFF, J. CONCUR.

APPENDIX D

STATE of INDIANA

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS
MARJORIE H. O'LAUGHLIN, CLERK
217 STATE HOUSE

INDIANAPOLIS, 46204

TELEPHONE 232-1930

No. 1-985A219
Rediehs Express, Inc. V. Patricia Maple et al

You are hereby notified that the Supreme Court has on this day Appellants (Rediehs) petition for Oral Argument is hereby DENIED. Givan, C.J. All Justices Concur.

Petition for Transfer of Appellant, Rediehs Express, Inc. is hereby DENIED. Givan, C.J. All Justices Concur.

Please acknowledge receipt of this notice in order that our records may show that you have been notified of this action.

WITNESS my name and the seal of said Court, this 8th day of Oct, 1986

/s/ Marjorie H. O'Laughlin
Clerk Supreme Court and Court of Appeals